

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO – Dayton Division**

MICHAEL POFFENBARGER : Case No.:
Plaintiff :
v. :
Hon. FRANK KENDALL, et. al. :
Defendants :

ORDER GRANTING PLAINTIFF’S MOTION FOR A TRO

The Court, being fully apprised, grants Plaintiff’s Motion for a Limited Temporary Restraining Order. Defendants Frank Kendall, LTG Robert Miller, LTG Richard Scobee, MGen Jeffrey Pennington, Col. Raymond Smith, and LTC Christopher Kojak are each (along with their officers, agents, servants, employees, and attorneys, and persons acting in concert with them) hereby ENJOINED from instituting any punitive action, to include any letters or reprimand, to institute any non-judicial punishment, to court-martial the Plaintiff, or to take any other adverse action against him, for his refusal to adhere to the COVID-19 vaccination mandate (or to follow orders requiring him to comply with same). No bond need be posted.

The institution of punitive actions against the Plaintiff, in light of his religious accommodation request, and in light of Defendants’ having granted medical and administrative accommodations, is irreparable harm and Plaintiff has made a colorable showing of a violation of the federal RFRA statute. *Roberts v. Neace*, 958 F.3d 409 (6th Cir. 2020); *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610 (6th Cir. 2020); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (irreparable harm from violation of rights); *Holt v. Hobbs*, 574 U.S. 352 (2015); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

The Court finds that Plaintiffs’ Counsel did provide email notice to the General Counsel of the Air Force, and the U.S. Department of Justice, but in any event, given the pendency of punitive action against the Plaintiff, a no-notice *status quo* restraining order was appropriate.

A preliminary injunction hearing shall be set within the 14 day period provided for under FRCP 65, for January ___, 2022, at __:___ a.m./p.m. Defendants shall respond to Plaintiff’s Motion for Preliminary Injunction not later than January ___, 2022 at 5:00 p.m. Plaintiff shall file any Reply not later than January ___, 2022 at 5:00 p.m.

Entered this ___ day of January, 2022, at __:___ a.m./p.m. Plaintiff’s Counsel shall provide notice of the entry of this Order to Defendants.

IT IS SO ORDERED:
